

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWIN BANKS,

Plaintiff,

-v-

9:13-CV-1500
(DNH/ATB)

D. ROCK, Superintendent, Upstate
Correctional Facility; E. MARSHALL, Correction Officer,
Upstate Correctional Facility; M. SEVEY,
Correction Officer, Upstate Correctional Facility;
B. PAGE, Correction Officer; Upstate Correctional
Facility, HIDE, Correction Officer; Upstate Correctional
Facility;

Defendants.

APPEARANCES:

OF COUNSEL:

EDWIN BANKS
Plaintiff, *Pro Se*
03-B-1574
Marcy Correctional Facility
P.O. Box 3600
Marcy, New York 13403

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Attorney General for the State of New York
Attorneys for Defendants
The Capitol
Albany, New York 12224

RACHEL M. KISH, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Edwin Banks brought this civil rights action pursuant to 42 U.S.C. § 1983. See Complaint, ECF No. 1. On March 8, 2016, the Honorable Andrew T. Baxter, United States Magistrate Judge, advised by Report-Recommendation that the defendants' motion to dismiss plaintiff's action as a sanction for plaintiff failing to participate in his deposition pursuant to Federal Rule of Civil Procedure 37. See ECF No. 72. In a March 30, 2016 Order, this Court

accepted the Report-Recommendation in whole and dismissed plaintiff's action with prejudice. See ECF No. 73. On August 5, 2016, plaintiff requested that the Court vacate its prior Order and permit him an opportunity to file objections. See ECF No. 79. On August 10, 2016, this Court granted plaintiff's request and ordered that any objections be submitted by August 24, 2016. See ECF No. 80. Although the Order was sent to plaintiff's address at Marcy Correctional Facility, plaintiff failed to timely file such objections. Instead, on December 14, 2016, plaintiff submitted a letter seeking the status of his case.

After permitting plaintiff an additional period of time to submit objections and based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

In plaintiff's December 14, 2016 letter, he indicates a desire to appeal this Court's ruling. The plaintiff is advised that pursuant to the Federal Rule of Appellate Procedure, plaintiff must file a notice of appeal in compliance with Rule 3(c) to challenge this Decision and Order.

Therefore, it is ORDERED that:

- (1) Defendants' motion to dismiss plaintiff's action as a sanction for failing to participate in his deposition, pursuant to Federal Rule of Civil Procedure 37 (ECF No. 71) is **GRANTED** and the complaint is **DISMISSED WITH PREJUDICE**; and
- (2) The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

The Clerk of the Court shall enter judgment and close the case

IT IS SO ORDERED.

Dated: March 29, 2017
Utica, New York


United States District Judge